

SENATE BILL

No. 231

Introduced by Senator Lowenthal

February 23, 2009

An act to amend ~~Section 25205.5~~ *Sections 25205.5 and 25205.9* of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Lowenthal. Hazardous waste: generator fees.

~~Existing~~

(1) Existing law requires a generator of hazardous waste to pay the State Board of Equalization a generator fee for each generator site for each calendar year, unless the generator has paid a facility fee or received a specified credit for each specific site for that calendar year. The generator fee is determined pursuant to a base fee rate multiplied in a specified manner determined by the amount of waste generated during the prior calendar year. Existing law sets the base fee rate at \$2,748 for the 1997 calendar year and requires the board to adjust the base fee rate annually to reflect changes in the cost of living. The generator fee is required to be deposited in the Hazardous Waste Control Account. A violation of hazardous waste control laws is a crime.

This bill would specify that the base fee rate is \$3,815 for the 2008 calendar year instead would require each generator of 5 tons or more to pay a fee in an unspecified amount per ton of hazardous waste generated during the prior calendar year, subject to the specified exceptions.

(2) The bill would make related conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25205.5 of the Health and Safety Code is amended to read:

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, a generator of hazardous waste, in the ~~amounts~~ *amount* specified in subdivision ~~(e)~~ (b), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee or received a credit, as specified in Section 25205.2, for each specific site, for the calendar year for which the generator fee is due.

~~(b) The base fee rate for the fee imposed pursuant to subdivision (a) is three thousand eight hundred fifteen dollars (\$3,815).~~

~~(c) (1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.~~

~~(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.~~

~~(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.~~

~~(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.~~

~~(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.~~

~~(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.~~

~~(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.~~

~~(d) The base rate established pursuant to subdivision (b) was the base rate for the 2008 calendar year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.~~

1 (b) Each generator of five tons or more shall pay _____ dollars
2 (\$_____) per ton of hazardous waste generated during the prior
3 calendar year.

4 ~~(e)~~

5 (c) The establishment of the annual operating fee pursuant to
6 this section is exempt from Chapter 3.5 (commencing with Section
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

8 ~~(f)~~

9 (d) The following materials are not hazardous wastes for
10 purposes of this section:

11 (1) Hazardous materials that are recycled, and used onsite, and
12 are not transferred offsite.

13 (2) Aqueous waste treated in a treatment unit operating, or that
14 subsequently operates, pursuant to a permit-by-rule, or pursuant
15 to Section 25200.3 or 25201.5. However, hazardous waste
16 generated by a treatment unit treating waste pursuant to a
17 permit-by-rule, by a unit that subsequently obtains a permit-by-rule,
18 or other authorization pursuant to Section 25200.3 or 25201.5 is
19 hazardous waste for purposes of this section.

20 ~~(g)~~

21 (e) The fee imposed pursuant to this section shall be paid in
22 accordance with Part 22 (commencing with Section 43001) of
23 Division 2 of the Revenue and Taxation Code.

24 ~~(h)~~

25 (f) (1) A generator who pays a hazardous waste generator
26 inspection fee to a certified unified program agency, that is imposed
27 as part of a single fee system and fee accountability program that
28 are both in compliance with the requirements of Section 25404.5,
29 shall be eligible for a refund of all, or part of, the generator fee
30 paid pursuant to subdivision (a) if both of the following conditions
31 apply:

32 (A) The generator received a credit pursuant to Section 43152.7
33 or 43152.11 of the Revenue and Taxation Code for fees paid for
34 hazardous waste generated in 1996.

35 (B) The department certifies, pursuant to subdivision (b) of
36 Section 25205.9, that funds are available to pay all or part of the
37 refund.

38 (2) A generator who is eligible for a refund pursuant to
39 paragraph (1) shall submit an application for that refund to the
40 board by September 30 following the fiscal year during which the

1 generator paid the generator fee pursuant to subdivision (a). An
2 application for a refund postmarked after September 30 is void,
3 shall not be processed by the board, and shall be returned to the
4 applicant.

5 ~~(i)~~

6 (g) (1) A generator who transfers hazardous materials to an
7 offsite facility for recycling at that offsite facility or another offsite
8 facility shall be eligible for a refund of all, or part of, the generator
9 fee paid pursuant to subdivision (a) if all of the following
10 conditions apply:

11 (A) The offsite facility to which the hazardous materials are
12 manifested pays a facility fee pursuant to Section 25205.2.

13 (B) The amount of hazardous materials transferred to the offsite
14 facility and recycled there, when deducted from the total tonnage
15 of hazardous waste generated at the generator's site, results in the
16 generator becoming eligible for a generator fee that is lower than
17 the fee paid pursuant to subdivision (a).

18 (C) The hazardous materials transferred to the offsite facility
19 are not burned in a boiler, industrial furnace, or an incinerator, as
20 those terms are defined in Section 260.10 of Title 40 of the Code
21 of Federal Regulations, used in a manner constituting disposal, or
22 used to produce products that are applied to land.

23 (D) The department certifies, pursuant to subdivision (b) of
24 Section 25205.9, that funds are available to pay all or part of the
25 refund.

26 (2) A generator who is eligible for a refund pursuant to
27 paragraph (1) shall submit an application for that refund to the
28 board by September 30 following the fiscal year during which the
29 generator paid the generator fee pursuant to subdivision (a). An
30 application for a refund postmarked after September 30 is void,
31 shall not be processed by the board, and shall be returned to the
32 applicant.

33 ~~(j)~~

34 (h) (1) The amendment of this section made by Chapter 1125
35 of the Statutes of 1991 does not constitute a change in, but is
36 declaratory of, existing law.

37 (2) The amendment of subdivision (a) of this section made by
38 Chapter 259 of the Statutes of 1996 does not constitute a change
39 in, but is declaratory of, existing law.

1 *SEC. 2. Section 25205.9 of the Health and Safety Code is*
2 *amended to read:*

3 25205.9. (a) On or before June 30 of each year, the department
4 shall determine if there are surplus funds in the Hazardous Waste
5 Control Account and shall, upon appropriation by the Legislature,
6 allocate these surplus funds to pay refunds in the following order
7 of priority:

8 (1) To pay refunds to generators pursuant to subdivision (c).

9 (2) To pay refunds to generators pursuant to subdivision (d).

10 However, the department shall not pay refunds pursuant to
11 subdivision (d) until all applications for refunds pursuant to
12 subdivision (c) have first been paid.

13 (b) The department shall certify the amount of the surplus in
14 the Hazardous Waste Control Account to the board and shall direct
15 the board to pay refunds to generators pursuant to subdivisions (c)
16 and (d) to the extent funds permit. If funds are not sufficient to
17 pay all the refunds for which the board receives applications
18 pursuant to subdivision-~~(h)~~ (f) of Section 25205.5, the department
19 shall direct the board to pay refunds pursuant to subdivision (c)
20 on a pro rata basis. If funds are sufficient to pay all refunds for
21 which applications are received pursuant to subdivision-~~(h)~~ (f) of
22 Section 25205.5 but not sufficient to pay all refunds for which
23 applications were received by the board pursuant to subdivision
24 ~~(i)~~ (g) of Section 25205.5, the department shall direct the board to
25 pay refunds pursuant to subdivision (d) on a pro rata basis.

26 (c) (1) If the department certifies that there are sufficient funds
27 to do so, the board shall issue refunds, in the manner directed by
28 the department pursuant to subdivision (b), to hazardous waste
29 generators who are eligible for refunds pursuant to paragraph (1)
30 of subdivision-~~(h)~~ (f) of Section 25205.5.

31 (2) The refund made to a generator pursuant to this subdivision
32 shall not exceed the fee paid by the generator pursuant to Section
33 25205.5, or exceed the hazardous waste generator inspection fee
34 paid to the certified unified program agency for the previous
35 calendar year, whichever is less.

36 (3) The board may issue refunds pursuant to this section only
37 if the department certifies, pursuant to subdivision (b), that funds
38 for these refunds are available.

39 (d) (1) If the department certifies that there are sufficient funds
40 to do so, the board shall issue refunds, in the manner directed by

1 the department pursuant to subdivision (b), to hazardous waste
2 generators who are eligible for refunds pursuant to paragraph (1)
3 of subdivision ~~(i)~~ (g) of Section 25205.5.

4 (2) The refund made to a generator pursuant to this subdivision
5 shall be equal to the difference between the amount of the generator
6 fee paid by the generator pursuant to Section 25205.5 and the
7 amount the generator would have paid if the amount of hazardous
8 materials transferred to an offsite facility for recycling had been
9 deducted from the total tonnage of hazardous waste generated at
10 the generator's site. However, if a generator receives a refund
11 pursuant to subdivision (c), the generator ~~may~~ *shall* not receive a
12 refund pursuant to this subdivision that exceeds the difference
13 between the amount of the generator fee paid pursuant to Section
14 25205.5 and the amount of the refund received pursuant to
15 subdivision (c).

16 (3) The board may issue refunds pursuant to this subdivision
17 only if the department certifies, pursuant to subdivision (b), that
18 funds for these refunds are available.

19 (e) For purposes of this section, "surplus" means the amount in
20 the Hazardous Waste Control Account on June 30 of each year
21 that is in excess of the reserve required by subdivision (k) of
22 Section 25174.